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June 20, 2019

Hon. Lorna G. Schofield
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: 18-cv-4023, *Rosario v. City of New York*

Dear Judge Schofield:

Plaintiff writes to offer supplemental authority in further support of his opposition to the pending motion for judgment on the pleadings. *See* D.E. 78 at 9–13. In the attached opinion and order, the Supreme Court reversed *McDonough v. Smith*, 898 F.3d 259 (2d Cir. 2018), a case Defendants relied upon extensively in their motion. *See* D.E. 63 at 8–12.

In reversing the Second Circuit’s erroneous accrual analysis, the Supreme Court reiterated longstanding precedent holding that the statute of limitations does not begin running on § 1983 wrongful conviction claims—like Plaintiff’s fabrication-of-evidence and *Brady* claims—until the conviction has been “invalidated” within the meaning of *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). *See* Ex. 1 (*McDonough* slip op.) at 8, 9, 11 (holding that evidence fabrication claims do not accrue until “the criminal proceeding has ended in the defendant’s favor, or a resulting conviction has been invalidated”). Applying that logic here, Plaintiff’s wrongful conviction claims did not accrue under *Heck* (and now *McDonough*), until, at the earliest, his conviction was vacated. *Id.* at 9; *Heck*, 512 U.S. at 486–87. Plaintiff’s claims, therefore, were timely, and the Court should reject Defendants’ statute of limitations arguments.

Respectfully,

/s/ Richard Sawyer

Richard Sawyer
Attorney for Plaintiff
Richard Rosario

CC: All counsel (*Via ECF*)